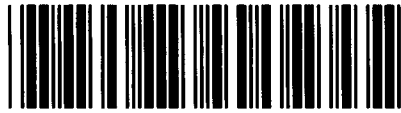


Control Number: 49863



Item Number: 21

Addendum StartPage: 0

PETITION OF ALAMO MISSION LLC §
 TO AMEND ROCKETT SPECIAL §
 UTILITY DISTRICT'S WATER §
 CERTIFICATE OF CONVENIENCE §
 AND NECESSITY IN ELLIS COUNTY §
 BY EXPEDITED RELEASE §

2019 OCT 11 PM 3:01
 PUBLIC UTILITY COMMISSION
 OF TEXAS

**ROCKETT SPECIAL UTILITY DISTRICT'S
 SURREPLY TO PETITIONER'S REPLY**

COMES NOW, ROCKETT SPECIAL UTILITY DISTRICT ("Rockett") and files its Surreply to Petitioner's Reply to Rockett's Responses filed by Alamo Mission LLC ("Petitioner") in this Docket pursuant to 16 Texas Administrative Code (TAC) § 22.78. In support thereof, Rockett respectfully would show as follows:

I. Overview

The Petition for expedited release in this Docket on August 16, 2019 ("Petition"), seeks to decertify approximately 167 contiguous acres of real property in Ellis County within Rockett's CCN (the "Property") pursuant to Tex. Water Code (TWC) § 13.254(a-5). Petitioner filed its Reply to Rockett's Responses, Item 16 of this Docket, on October 4, 2019 ("Petitioner's Reply"). 16 TAC § 22.78(a) provides that a responsive pleading shall be filed within five working days after receipt of the pleading to which the response is made; therefore, this Surreply to Petitioner's Reply is timely filed.

Petitioner claims that Rockett is not eligible for protections from decertification under 7 U.S.C. § 1926 because the subject property is not "receiving water service" as determined by various cited cases. However, in addition to misleading information provided by Petitioner regarding Petitioner's request of service from Rockett and the current status of water service to the Property and nearby Rockett facilities, Petitioner blatantly failed to show the differences between the facts of those cited cases and the

facts of this Docket, to allow the Public Utility Commission of Texas (PUC) to accurately make a decision whether the subject property is receiving water service.

Most importantly, Petitioner ignores that TWC § 13.254(a-5), the statute under which Petitioner is seeking relief, has been declared unconstitutional and void by a federal court in a proceeding for which the Commissioners of the PUC are parties and currently the subject of a federal injunction,¹ and therefore binding on the PUC and the Commissioners under principles of Res Judicata and Claim Preclusion, Issue Preclusion, and Estoppel by Judgment. Not only is Rockett eligible for § 1926(b) protection, but Petitioner requests the PUC to make determinations of issues associated with § 1926(b) when the PUC has no jurisdiction to decide issues of federal law under § 1926(b). Rockett reserves all federal issues pursuant to its “England Reservation” previously asserted.²

II. Rockett “made service available” to the Property under 7 U.S.C. § 1926

A. *Rockett previously served, and remains capable of serving, water to the Property*

In Rockett’s Response and Objection to the Petition, Rockett presented evidence that the Property received water service from Rockett and previous owners of the Property requested and paid for water service, in addition to the 5/8” x 3/4” meter tap and waterlines on and near the Property that transmit water directly to the Property.³ In Petitioner’s Reply, Petitioner does not refute that Rockett previously served the Property through the meter box and waterlines located on and near the Property. In fact, Petitioner observed that there is a “valve” present on the Property.⁴ Had Petitioner opened this

¹ *Crystal Clear Special Utility Dist. v. Walker, et. al.*, No. 1:17-CV254-LY, 2019 WL 2453777 (W.D. Tex. Mar. 27, 2019).

² See Rockett’s Supplemental Filing, Item 11 of this Docket, p. 5.

³ Rockett’s Response and Objection to the Petition (“Rockett’s Response”), Item 8 of this Docket, pp. 2-3.

⁴ See Petitioner’s Reply.

valve, Petitioner would have learned that water is immediately available at the valve and meter box—by a simple turn of the valve.

Although Petitioner claims that the meter box on the Property is inactive, does not contain a meter, and is locked and that current tenant of the Property has never received water service since 2016, this does not prove that Rockett is not capable of serving water to the Property at the time that the Petition was filed. Pursuant to the Fifth Circuit, Rockett has made water service available to the Property from the simple fact that the Property is within Rockett's CCN.⁵ In addition, because Rockett has a functioning water line on the Property, it has also satisfied the "pipes in the ground" test recognized by other federal circuit courts under § 1926(b).⁶

For property that previously received water service from Rockett where a meter was removed and meter box locked, Rockett can once again provide water to that property within one hour or less. The affidavit of Rockett's General Manager Kay Phillips, attached hereto as Exhibit A, provides the general procedure to re-install a meter where a property previously received water service from Rockett. Petitioner's contention is premised on the nonsensical argument that a landowner can evade the fact that the property receives service, by simply turning a valve off or removing the meter. Petitioner cannot so easily evade Texas law or Federal law.

In Petitioner's Reply, Petitioner refers to the *Johnson* case pointing out what specific facilities the general manager of that district specifically averred to show the subject property was receiving water service and that the court rejected the district's

⁵ See *No. Alamo Water Supply Corp. v. City of San Juan, Tex.*, 90 F.3d 910 (5th Cir. 1996).

⁶ See *id.*; see also *Sequoyah Cty. Rural Water Dist. No. 7 v. Town of Muldrow*, 191 F.3d 1192, 1203 (10th Cir. 1999); see also *Bell Arthur Water Corp. v. Greenville Utilities Com'n*, 173 F.3d 517 (4th Cir 1999).

evidence of providing service.⁷ However, Petitioner failed to explain further that the court in *Johnson* found that “other evidence showed that there was no water service or [d]istrict facilities located on the [p]roperty capable of providing water service at the time [petitioner] filed its petition ...”, including that the petitioner’s broker “was unable to locate water meter boxes on the [p]roperty, finding only ‘two shuttered groundwater well heads, and a former windmill location’ ... implying that any dwelling on the property required that water pressure be generated locally and not from a retail water utility service provider (*emphasis added*).”⁸ Additionally, the court noted that “the Commission could have found significant the delays during the administrative proceeding in the [d]istrict’s submissions of evidence as support for the Commission’s conclusion that the [p]roperty was not receiving service” since the district in the *Johnson* case did not submit its position and evidence that the property was receiving water service until three months *after* the petition was submitted, and the district could not locate the water meter boxes until even *after* staff’s final recommendation and proposed order was already due.⁹

Unlike the *Johnson* case, there is no evidence that the Property requires water pressure be generated locally and is not able to receive service from Rockett’s meter box and waterlines on and nearby the Property. Moreover, Petitioner does not disagree that the Property previously received water service from Rockett, and that Rockett is capable of providing water to the Property.

B. *Rockett has the physical ability to serve Petitioner’s requested water service to invoke § 1926(b) protection*

⁷ See Petitioner’s Reply, p. 5 (citing *Johnson Cty. Special Util. Dist. v. Pub. Util. Comm’n of Texas*, No. 03-17-00160-CV, 2018 WL 2170259, at *4 (Tex. App. – Austin May 11, 2018), *review denied* (Aug. 30, 2019).

⁸ See *Johnson Cty. Special Util. Dist. v. Pub. Util. Comm’n of Texas*, No. 03-17-00160-CV, 2018 WL 2170259, at *19-20 (Tex. App. – Austin May 11, 2018), *review denied* (Aug. 30, 2019).

⁹ See *id.*, at *20-21.

Fifth Circuit law¹⁰ provides that Rockett is deemed, as a matter of law, to have made water service available under § 1926(b) if the Property is within Rockett's CCN. Since Petitioner concedes that the Property is within Rockett's CCN, as a matter of federal law, Rockett has made service available. In addition, Rockett has the physical ability—through pipes in the ground and available capacity—to satisfy the “**legitimate** domestic water needs” of the Property.

i. At the time the Petition was filed, Rockett had facilities within sufficient proximity from which service could have provided within a reasonable time. When determining whether a retail water utility has in fact “made service available” as the second prong of § 1926(b), the Tenth Circuit determined that adequate facilities within or adjacent to the subject property that could provide service to the area within a reasonable time after a request for service is made was sufficient evidence that service was made available.¹¹ In Rockett's Response, Rockett provided evidence of currently installed facilities and waterlines on the Property and nearby lands at the time the Petition was filed.¹²

What is a “reasonable time” may vary depending on the facts and circumstances of each case. Petitioner's specific request for the significant amount of water in a short amount of time without providing sufficient details to Rockett is addressed further below. More importantly, an indebted association is not required to take the risks and speculate to construct facilities in an area that may be developed *someday* and need water service; the association is allowed to wait until a customer materializes and requests water before

¹⁰ See *N. Alamo*, 90 F.3d 910.

¹¹ See *Moongate Water Co., Inc. v. Butterfield Park Mut. Domestic Water Ass'n*, 291 F.3d 1262, 1268 (10th Cir. 2002) (affirming the Tenth Circuit's “pipes in the ground” test in the *Sequoyah* case showed the water association “made service available”).

¹² Rockett's Response, p. 3-4, Exhibits A-D

it expends funds to extend waterlines to that customer.¹³ Meaning, water service does not need to be “immediately” available that someone “must be able to go over to the faucet and turn on the water.”¹⁴ Further, Petitioner’s representatives submitted a non-standard service application (described below) on April 19, 2019; however, Petitioner did not purchase the subject property until August 2019.¹⁵ Rockett requires all applicants to show proof of ownership of property¹⁶ to materialize the applicant’s request and alleviate the high risk and speculation of expending funds and to show the applicant is able to contract with Rockett for the requested service.

Rockett also requires sufficient verifiable engineering data to determine the legitimate domestic water needs (non-fire flow needs) of the property. Rockett’s engineer conducts a proper hydraulic analysis and prepares his recommendation and requirements¹⁷ for the property to receive water in a formal letter to Rockett. Because adequate documentation was never provided by Petitioner, Rockett’s engineer could not conduct a proper hydraulic analysis or his recommendation letter to Rockett.

ii. Rockett is allowed a reasonable amount of time to make any necessary improvements to provide the service requested by Petitioner; however, such necessary improvements have **not** been determined by Rockett because Petitioner failed to provide adequate and verifiable information.

A retail water utility is not required to have facilities in place to which the customer could connect immediately, but is allowed reasonable time to make any necessary

¹³ See *Sequoyah*, 191 F.3d 1192; see also *Pittsburgh Cty. Rural Water Dist. No. 7 v. City of McAlester*, 211 F.3d 1279 (Table) (10th Cir. 2000).

¹⁴ *Le-Ax Water Dist. v. City of Athens*, 346 F.3d 701, 707 (6th Cir. 2003).

¹⁵ Petition, Item 1 filed in this Docket on August 16, 2019, Exhibit D.

¹⁶ From Rockett’s Rate Order, Section E.2(b), on its website <https://rockettwater.com/all-forms-and-reports> (last visited on Oct. 10, 2019).

¹⁷ From Rockett’s Rate Order, Sections E.2 and F.5, on its website <https://rockettwater.com/all-forms-and-reports> (last visited on Oct. 10, 2019).

improvements.¹⁸ Before determining whether Rockett has reasonable time to make any necessary improvements, it must first be determined what necessary improvements would be required. Although Rockett's staff and engineer has discussed possible facilities, Rockett is unable to determine sufficient improvements due to lack of required information from Petitioner.

Petitioner claims it provided Rockett and its engineer with full details of the Project, including Petitioner's requested water service, which is proposed on the Property.¹⁹ However, this is false as Petitioner vaguely answered questions from Rockett regarding the use of the Property and also refused to provide Rockett with all required documentation and information to accurately determine the legitimate basis for the speculative demand claimed by Petitioner, the size of waterline(s), costs, and any other requirements to serve the Property as Petitioner specifically requested.

When an applicant applies for water service from Rockett, the applicant is required to fill out and submit an application and required documents and information.²⁰ Petitioner was given a non-standard service application, titled *Application for Non-Standard Water Utility Service*, (further referred herein as "NSA") to submit to Rockett along with the required supplemental documents listed on the NSA. The supporting affidavit of Kay Phillips, General Manager of Rockett in the attached Exhibit A attests to Rockett's standard procedure when submitting the NSA and required supplemental documents. The attached Exhibit B provides a true and correct copy of Rockett's NSA form given to Petitioner, where the required supplemental documents (listed at the bottom of page 2 of the NSA) allow Rockett's engineer and staff to determine if and what water facilities will

¹⁸ See *Moongate*, 291 F.3d at 1268.

¹⁹ Petitioner's Reply, p. 2.

²⁰ From Rockett's Rate Order, Section E. on its website <https://rockettwater.com/all-forms-and-reports> (last visited on Oct. 10, 2019).

need to be constructed and/or installed in order to provide the requested water service, the related costs, if easements are required to be granted to Rockett for the facilities, and other requirements prior to Rockett providing water service.

More importantly, the attached Exhibit C provides a true and correct copy of the NSA submitted by Petitioner to Rockett on or about April 19, 2019, including a water service plan, which is only one of the required supplemental documents. After multiple discussions with various Petitioner representatives for information, who answered in an evasive manner regarding details of the Project and what the water would be used for, Stephanie Sunico, a senior environmental scientist for Petitioner, told Kay Phillips, Rockett's General Manager, that complete plans had not been prepared for the Project. Stephanie Sunico, Bradd A. Hout, and Will Bohls, all authorized representatives of Petitioner, constantly asked Rockett staff if the engineer could provide an analysis and respond quickly as to whether Rockett could provide service based on the grossly deficient information given by Petitioner.

Rockett's engineer was able to review Petitioner's NSA (see attached Exhibit C), which shows that Petitioner requested one meter to provide **1.46 billion gallons** of water annually, with the highest day of **4 MGD (million gallons per day) by 2021**, without showing any other water plans or details of the use of water, including water allotted for fire flow or fire protection. Rockett requires an applicant to provide a letter from the city or county stating fire protection requirements, which Petitioner did not submit. Petitioner stated that the intended land use of the subject property would be "light industrial" on the NSA, but did not provide anything more specific to indicate how water would be used on the Property nor did Petitioner provide any data to support the speculative demand for water on an annual and per day basis.

The information provided by Petitioner was misleading and insufficient for Rockett or its consulting engineer to accurately determine what improvements would be required. Without the details of the Project and what water to the Property was actually going to be used for, the required supplemental information, and letter from the city or county stating fire protection requirements, Rockett could not determine if the requested 4 MGD was mostly for fire protection, irrigation or landscaping, or if the Property was going to recycle water where 4 MGD was not going to be actually consumed per day. Additionally, Rockett could not provide Petitioner with what number, size, or costs of waterline(s) or other improvements that would be sufficient to serve the Property as requested, since Petitioner did not submit sufficient information to determine the facilities needed.

iii. Rockett is not required to provide water for fire protection in order to invoke § 1926(b) protection; Petitioner did not provide how much of the requested 4 MGD (million gallons per day) is reserved for fire protection.

An indebted association's capacity to provide fire protection is irrelevant to invoke § 1926(b) protection.²¹ Rockett requires an applicant for non-standard service to provide a letter from the city or county stating fire protection requirements when requesting service to determine how much of the requested water usage is allotted for fire protection. Without the fire protection requirement from the city or county, Rockett cannot determine, nor will speculate, how much of the 4 MGD requested by Petitioner is allotted for actual water usage or whether the amount requested was inflated for fire protection.

iv. Without providing any further information, Petitioner's request that Rockett provide 1.46 billion gallons annually within two years was unreasonable and speculative.

²¹ See *Sequoyah*, 191 F.3d at 1204n.10 (referring to the U.S. District Court for the Northern District of Ohio's holding that § 1926(b) was not enacted to supply fire protection).

Petitioner's request that Rockett determine whether it could provide 1.46 billion gallons of water annually by 2021 to the Property, based only on the limited details found in the NSA and vague conversations with Petitioner's representatives, was unreasonable and speculative. Petitioner did not give Rockett the opportunity to accurately determine the required facilities or costs to provide the requested service within two years.

III. Rockett questions whether Petitioner actually requested water service

In the NSA submitted by Petitioner to Rockett, Petitioner edited Rockett's standard NSA form to state that "Alamo Mission LLC ("Applicant") requests *an evaluation of non-standard water utility service from Rockett*"²² As already discussed, Petitioner did not provide Rockett with the necessary information to accurately determine what facilities and improvements would need to be constructed to provide service to the Property as specifically requested, and Rockett's analysis of whether it could provide the enormous quantity of water in the short amount of time without further information was preliminary at best.

Petitioner claimed that Rockett concluded it was unable to supply the Project;²³ however, Petitioner conceded that the plans for the Project remained incomplete, and therefore undefined and speculative. Petitioner's incessant request that Rockett provide an analysis without submitting any further information, and then claim Rockett is incapable of providing water service to the Property, is quite misleading. Petitioner provided an email from Rockett's General Manager Kay Phillips to Petitioner's authorized representative Stephanie Sunico;²⁴ yet, Petitioner failed to include the initial email from

²² See p. 1 of the attached Exhibit B and Exhibit C for comparison (emphasis added).

²³ Petitioner's Reply, p. 2 and Exhibit 2.

²⁴ Id., Exhibit 2.

Stephanie Sunico eliciting such specific response from Kay Phillips, as seen in the attached Exhibit D.

Petitioner provides conflicting information in Exhibit C and Exhibit D as to whether Petitioner actually requested service from Rockett or merely an evaluation of potential water service, since Petitioner did not provide the required supplemental documents with details to determine actual water usage.

IV. Doubts and evidentiary uncertainties must be resolved in favor of the Rockett, as the indebted association seeking to invoke § 1926(b) protection.

Here, there is no uncertainty that the Property is within Rockett's CCN; therefore, under Fifth Circuit law,²⁵ which is applicable in Texas, Rockett has satisfied all elements of § 1926(b) and entitled to § 1926(b) protection.

Although PUC Staff filed its Recommendation on Final Disposition to approve the Petition on September 26, 2019²⁶, Order No. 4 in this Docket, filed on October 2, 2019, must be considered. Petitioner cannot ignore the fact that this Order required PUC Staff to file comments on Rockett's Supplemental Filing regarding federal funding and asserted § 1926(b) protection, as part of the PUC's consideration of this Docket.

When determining whether Rockett provided service or made service available to the Property, "[d]oubts about whether a water association is entitled to protection from competition under § 1926(b) should be resolved in favor of the [federally]-indebted party seeking protection for its territory."²⁷ "Every federal court to have interpreted § 1926(b) has concluded that the statute should be liberally interpreted to protect [federally]-indebted rural water associations from municipal encroachments."²⁸

²⁵ *N. Alamo*, 90 F.3d 910.

²⁶ PUC Staff's Recommendation, Item 9 of this Docket.

²⁷ *Sequoyah*, 191 F.3d at 1197.

²⁸ See *id.* (quoting the court's decision in *N. Alamo*, 90 F.3d, at 913).

Rockett has provided evidence that it is currently receiving funding guaranteed by the United States Department of Agriculture (USDA) and also was in the process of receiving funding guaranteed by the USDA at the time the Petition was filed;²⁹ thus, evidentiary uncertainty, if any, must be resolved in favor of Rockett in accordance with the federal courts.

V. Conclusion

Rockett “made service available” to the Property under 7 U.S.C. § 1926 in accordance with federal law, including the *N. Alamo* case,³⁰ and provided evidence that Rockett previously served and remains capable of serving water to the Property. Moreover, Rockett has the physical ability to serve Petitioner’s requested water service to invoke § 1926(b) protection, since Rockett has facilities within sufficient proximity from which service could be provided and as Rockett is allowed a reasonable time to make any necessary improvement to provide the service requested by Petitioner, regardless of the strict and short time frame requested by Petitioner.

Rockett is not required to speculate and take risks to fund and construct facilities to provide service to Petitioner, if the request has not been fully materialized as exemplified by Petitioner’s refusal to submit more detailed information to Rockett to accurately determine whether Rockett can provide the requested service.

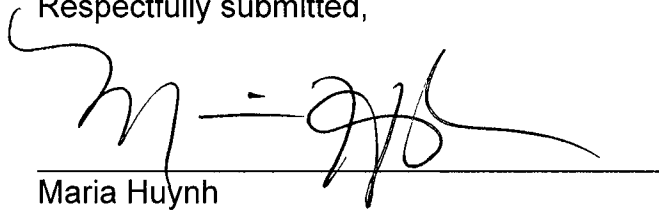
Because Petitioner contends that Rockett is not protected under 7 U.S.C. § 1926, though Rockett has provided evidence that it is entitled to such protection, any evidentiary uncertainty must be resolved in favor of Rockett, the indebted association, as repeatedly determined by federal courts.

²⁹ Rockett’s Supplemental Filing, Item 11 in this Docket, p. 2.

³⁰ *N. Alamo*, 90 F.3d 910.

Lastly, because TWC § 13.254(a-5) has been declared unconstitutional, the PUC is without jurisdiction or power to proceed pursuant to the unconstitutional statute. Therefore, the Petition in this Docket must be summarily dismissed as it is based solely on a law declared void by a federal court with jurisdiction over the PUC and its Commissioners.

Respectfully submitted,



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ATTORNEYS FOR ROCKETT SPECIAL
UTILITY DISTRICT

CERTIFICATE OF SERVICE

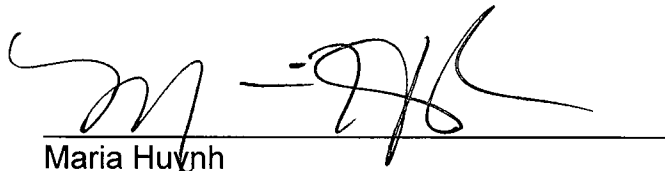
I certify that a true and correct copy of this document was served on the following parties of record on October 10, 2019, in accordance with 16 TAC § 22.74.

via e-mail: creighton.mcmurray@puc.texas.gov

Creighton R. McMurray
Attorney-Legal Division
Public Utility Commission
1701 N. Congress
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Austin, Texas 78711-3326
Attorney for the Commission

via e-mail: ldougal@jw.com

Leonard Dougal
Jackson Walker L.L.P.
100 Congress, Suite 110
Austin, Texas 78701
Attorney for Petitioner



Maria Huynh

EXHIBIT A

SUPPORTING AFFIDAVIT OF KAY PHILLIPS

STATE OF TEXAS

§

COUNTY OF ELLIS

§

§

BEFORE ME, the undersigned authority, on said date personally appeared Kay Phillips, who being first duly sworn states as follows:

"My name is Kay Phillips. I am over the age of 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.

Since 2007, I have been the duly appointed general manager of Rockett Special Utility District ("Rockett") and I am custodian of the records of Rockett.

I have read Rockett's Response to Petitioner's Reply in PUC Docket No. 49863 (the "Response") and each and every factual statement contained therein is true and correct.

Where a valve is present on a property being served by an active water line, the valve can be turned and water would be immediately available. When Rockett has served water to property where a meter was removed and the meter box locked, an employee of Rockett is able to unlock the meter box, drop in a meter, and immediately turn on water for service; this process takes approximately one hour or less. This includes the circumstances regarding the Property in this Docket.

When an applicant for non-standard service applies for service, Rockett requires the submission of a non-standard service application, titled *Application for Non-standard Water Utility Service*, ("NSA") and required supplemental documents listed in the NSA. This is in accordance with Rockett's tariff (referred as "Rate Order"). Exhibit B of the Response is a true and correct copy of the NSA given to Petitioner or its authorized representative.

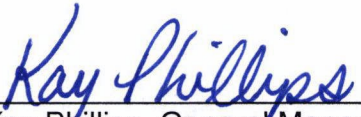
After an applicant submits the NSA and all supplemental documents to provide sufficient information, Rockett's engineer of record, Benjamin S. Shanklin, P.E., reviews such information and conducts a hydraulic analysis. In accordance with Rockett's Rate Order (tariff), Mr. Shanklin provides his recommendation and requirements for any installation or construction of meters, water lines and/or facilities, including the location of installation or connection, number and size requirements, to serve the property as requested. In his normal course of action, Mr. Shanklin provides this information in a formal letter, noting that his hydraulic analysis is only good for six months from the date of his letter.

Exhibit C attached to the Response is a true and correct copy of the NSA submitted by Petitioner, including the attached Water Service Plan found therein. Petitioner did not submit any other required documents listed on page 2 of the NSA, including but not limited to a letter from the city or county stating fire protection requirements or ownership documents (deed). Petitioner or its authorized representatives added the phrase "an evaluation of" to the first sentence of Petitioner's submitted NSA, to be read that Petitioner "requests an evaluation of non-standard water utility service from Rockett"

In conversations with Petitioner's authorized representatives, Rockett repeatedly requested specific and detailed information or documentation regarding the use of the Property or details of the Project that would be consuming water, how much fire protection would be required, among other things. However, Petitioner's authorized representatives gave vague responses to Rockett's questions and even Stephanie Sunico stated to me personally that Petitioner did not have complete plans at that time. Benjamin S. Shanklin, P.E., Rockett's engineer of record, did not produce a letter of his recommendation and requirements for Petitioner's water service request found in the NSA. Due to the lack of information from Petitioner and its authorized representatives, Rockett made a preliminary conclusion based on the submitted NSA and attached Water Service Plan.

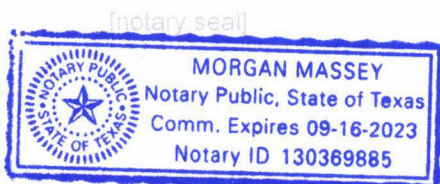
Exhibit D attached to the Response is a true and correct copy of the email from Stephanie Sunico dated June 20 and 26, 2019, as well as my reply on June 26, 2019.

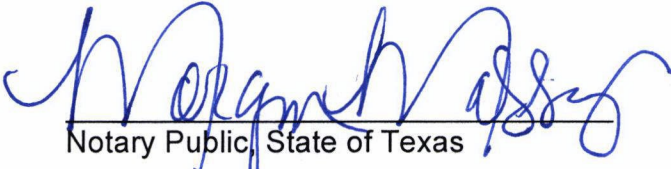
The documents stated as Exhibits to the Response are records that were made at or near the time of each act, event or condition set forth. These records were kept in the course of regularly conducted business activity of the District. It is the regular practice of the District activity to make such records."



Kay Phillips, General Manager
Rockett Special Utility District

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on the 10th day of October, 2019, by Kay Phillips, General Manager of Rockett Special Utility District, a political subdivision of the State of Texas.





Notary Public, State of Texas

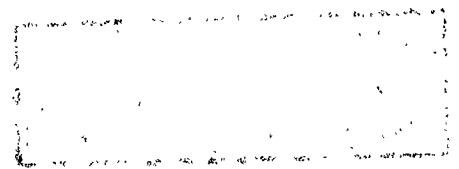


EXHIBIT B



APPLICATION FOR NON-STANDARD WATER UTILITY SERVICE

_____ ("Applicant") requests non-standard water utility service from Rockett Special Utility District ("District") to property located inside the District's state-certificated service area ("CCN"). Applicant understands and agrees that retail water utility service will only be available under the terms and conditions of District's rate order, the regulations of the Texas Commission on Environmental Quality ("TCEQ"), the Texas Water Code and the Texas Health & Safety Code, and applicable state and federal laws and regulations.

By signing and submitting this application for non-standard retail water utility service, Applicant declares that Applicant is the owner of the property requesting service or a developer with legal contractual rights to develop the property. If Applicant is not the landowner or developer, Applicant must have written legal authority to make this application and to bind the landowner/developer to the terms of any resulting service contract. [Attach copy of sworn power of attorney]

The information solicited below shall be the minimum information required for Applicant to initiate non-standard service to the property. Applicant shall also be required to timely provide any additional information required by the District and/or its designated consulting engineers to evaluate the service request, its effects on the District's existing water system and customers and any additional service capacities that might need to be developed to fulfill this request.

This is only an application for non-standard service. Rockett Special Utility District is not obligated to provide service until the application has been evaluated and a final Non-Standard Contract has been executed by all necessary parties.

1. Applicant/Developer

Legal name & Title: _____
Physical address: _____ Mailing address: _____
Telephone: _____ Fax _____ Email: _____

2. Landowner

Legal name & Title: _____
Physical address: _____ Mailing address: _____
Telephone: _____ Fax _____ Email: _____

3. Responsible Engineer

Legal name & Title: _____
Firm: _____ Mailing address: _____
Telephone: _____ Fax _____ Email: _____

4. Property

Legal Name of Development or Business: _____
Location: _____
Number of acres: _____

Describe all intended land uses in the Development: (Attach additional sheets if necessary)

☐ Residential Subdivision ☐ Apartments ☐ Manufactured Home Park ☐ RV Park

☐ Commercial ☐ Other _____

Is the property located in the corporate limits or ETJ of a municipality? Yes ☐ No ☐

If yes, provide the name of the municipality: _____

If there will be internal streets/roads will they be Public or Private? (Please circle one)

Is application being made for entire property? Yes ☐ No ☐

If no, will there be phased development? Yes ☐ No ☐

Number of Phases _____

Phases for which service is being requested in this application: _____ Attach plat of entire property with all phases clearly delineated on it. Plat must indicate where individual service locations are anticipated.

5. Water Plan

Applicant must submit One (1) paper and one (1) electronic PDF copy of a detail water service plan tied to a plat of the property delineating all phases, number of service locations in each phase, all large water users, and types of water uses to be located on the property.

This water service plan must state: the level (quantity and quality) and manner (facilities, supply, and costs) of service for current and projected needs, and the projected land uses that support the requested level and manner of service

Water volume and pressure requirements:

Gallons: annual _____ highest day _____ Flow in gpm: average daily _____

Special service needs (may attach a separate sheet):

Quantity of meters: _____ Size of meters: _____

Type of fire protection: _____ # of Fire Hydrants: _____ Irrigation System: Yes ☐ No ☐

6. Time Table

Applicant must provide a statement of current needs, and a projection (Including dates) of future needs.

Commencement of construction on the property: _____

Commencement of construction on each phase: _____

Date water service is needed on the property? _____

Please attach the following documents:

- ☐ One (1) paper and one (1) electronic copy of a detail water service plan
- ☐ Map and description of the area to be served using map criteria in 30TAC §291.105(a)(2)(A–G)
- ☐ One (1) paper and one (1) electronic PDF copy of the preliminary plat signed and sealed by a licensed surveyor or registered professional engineer.
- ☐ Water demand/special service needs detail sheet
- ☐ Ownership documents (Deed)
- ☐ A letter from the City/County stating fire protection requirements
- ☐ Copy of irrigation plans

This application must be completed by the Applicant only. The District will take no action related to the above-described development until this application is complete. **A signed application will be considered complete only after the District has received all required attachments, including a valid check in the amount of \$3,000.00 plus \$10.00 for each in excess of 250 lots.**

This fee covers administrative, legal and engineering costs associated with an investigation of the District’s ability to provide service to the applicant’s project. Additional costs may be deemed necessary by the District appropriate to the size and scope of the project.

Applicant will pay all reasonable and necessary costs incurred by Utility in evaluating and responding to this non-standard service application. If Applicant changes the original signed Non-Standard Service Application, Applicant may be required to submit a new Non-Standard Service Application and submit the required fee for such Application. The fees stated above are only estimates required to start work.

Please be advised the hydraulic analysis performed by the District’s Engineer will expire six (6) months from the date of the Engineer’s approval letter.

All information provided to the District under an application for non-standard service shall be considered public information and will be made available for inspection and copying. Any person who submits information under such an application consents to the inspection and copying of that information.

I CERTIFY, AS THE APPLICANT OR AS AN AUTHORIZED REPRESENTATIVE ON BEHALF OF THE APPLICANT THAT THE FOREGOING REPRESENTATIONS CONTAINED IN THIS APPLICATION ARE TRUE AND CORRECT.

APPLICANT:

Signature: _____

Title: _____

Application Received by Utility:

By: _____ *Date of receipt: _____

***Application expires one year from this date.**

FOR DISTRICT USE

SERVICE INVESTIGATION FEE: \$ _____ for _____ requested meters

Check#: _____ Date Paid: _____ Received By: _____

Map Sheet #: _____ Between Nodes: _____

LIST MISSING ATTACHMENTS:

_____	Date Received: _____	By: _____
_____	Date Received: _____	By: _____
_____	Date Received: _____	By: _____

COMMENTS: _____

EXHIBIT C

EXHIBIT C will be filed separately under seal.

[Petitioner's Application for Non-standard Water Utility Service
submitted to Rockett]

EXHIBIT C will be filed separately under seal.

[Petitioner's Application for Non-standard Water Utility Service
submitted to Rockett cont.]

EXHIBIT C will be filed separately under seal.

[Petitioner's Application for Non-standard Water Utility Service
submitted to Rockett cont.]

EXHIBIT C will be filed separately under seal.

[Petitioner's Application for Non-standard Water Utility Service
submitted to Rockett cont.]

EXHIBIT C will be filed separately under seal.

[Petitioner's Application for Non-standard Water Utility Service
submitted to Rockett cont.]

EXHIBIT D

From: [Kay Phillips](#)
To: [Sunico, Stephanie](#)
Subject: RE: Project Bonnet Follow Up
Date: Wednesday, June 26, 2019 4:08:29 PM

Hi Stephanie,

According to the analysis of the District's consulting engineer, it has been determined the District does not currently have available water supply necessary to serve the Project and will not be capable of procuring additional water supply in the requested timeline. The District jointly owns a water treatment plant with the City of Waxahachie (the "Plant"), and the District is currently utilizing 100% of the District's portion of the Plant's capacity. Additional water supply is not available to the District from the Plant, and the District does not have any existing water service or water pipelines that can provide service to the Project site as requested. It is correct that the District does not have any outstanding federal debt currently.

Thank you,

Kay Phillips
General Manager
Rockett Special Utility District
PO Box 40, Red Oak, Texas 75154
126 Alton Adams Dr, Waxahachie, Tx 75165
(972) 617-3524 X 112
(469) 517-0989 Fax

From: Sunico, Stephanie <Stephanie.Sunico@stantec.com>
Sent: Wednesday, June 26, 2019 12:28 PM
To: Kay Phillips <kphillips@rockettwater.com>
Cc: Bradd Hout <BHout@allegrorealty.com>
Subject: RE: Project Bonnet Follow Up

Hi Kay

Just wanted to follow up on my call today. Could you let me know if the email below accurately describes the current situation with respect to the ability of Rockett to support Project Bonnet? I wanted to make sure I have accurately captured our phone conversations.

Stephanie Sunico
Senior Environmental Scientist

Direct: 817.203.0738
Mobile: 817.846.0880
Stephanie.Sunico@stantec.com

Stantec
5049 Edwards Ranch Road
Fort Worth, Texas 76109



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From: Sunico, Stephanie
Sent: Thursday, June 20, 2019 10:26 AM
To: kphillips@rockettwater.com
Cc: Bradd Hout <BHout@allegrorealty.com>
Subject: Project Bonnet Follow Up

Hi Kay,

I wanted to follow-up with you and make sure we are on the same page. Based on my conversation with you on June 4, I am requesting your confirmation of the below information from Rockett Special Utility District in relation to the application for retail water service submitted by Alamo Mission and accepted by Rockett on April 26, 2019.

Rockett does not currently have available the water supply necessary to serve the Project as requested, and does not think it is capable of procuring additional water supply in the requested timeline. In addition, Rockett is currently utilizing 100% of its portion of the capacity of the Water Treatment Plant co-owned with the City of Waxahachie, and additional water supply is not available from this Plant. As such, Rockett cannot serve the Alamo Mission project as requested. Rockett does not have any existing water service or water pipelines that can provide service to the Project site. Also, Rockett does not currently have any outstanding federal debt.

Thank you in advance for your response!

Stephanie Sunico
Senior Environmental Scientist

Direct: 817.203.0738
Mobile: 817.846.0880
Stephanie.Sunico@stantec.com

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5049 Edwards Ranch Road
Fort Worth, Texas 76109



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